

No. 9(I)-81/6 Lab. 14935.-In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J. D. Mehta, Deputy Labour Commissioner, Haryana (retired), Sole Arbitrator in respect of the dispute between Shri Ranveer Singh, son of Shri Jagdev Singh workman and the management of M/s Hindustan Everest Tools Ltd., Jatheri, Sonapat.

BEFORE SHRI J.D. MEHTA, SOLE ARBITRATOR, RETIRED DEPUTY LABOUR COMMISSIONER, HARYANA, RESIDENT OF D/E/ 137, TAGORE GARDEN, NEW DELHI : 110027

Shri Ranveer Singh, son of Shri Jagdev Singh

(Workman).

Versus

The Management of Hindustan Everest Tools Ltd., Jatheri, Sonapat, (Haryana).

Appearances.— 1. Shri Ranveer Singh alongwith Shri Chander Singh.

2. Shri U.C. Pant along with Shri D.N. Gupta.

ARBITRATION AWARD

The parties named above appointed me as a Sole Arbitrator in terms of arbitration agreement dated 29th April, 1981 under section 10A(3) of the I.D. Act, 1947. This arbitration agreement was published in the *Haryana Gazette (Extraordinary)*, vide No. ID/RTK/67/81/26735, dated 27th May, 1981. The following point in dispute was referred to me for arbitration :—

- (1) Whether the action taken by the management was justified and if not, to what relief the workman is entitled to.

On receipt of the notification, notices, as usual, were sent to the parties. The parties made their appearances, filed their statement of claims, the written statement as well as rejoinder. The management filed copies of documents in support of their contention in this case, while the representative of the workmen filed collective documents on behalf of the union and not written by the individual workmen. On the basis of their pleadings, the following issues were framed with their consent :—

- (1) Whether the workman was unauthorisedly absent exceeding 10 days from duty.
- (2) Whether the action taken by the management tantamounts to retrenchment if so to what relief he is entitled

Thereafter the parties led their evidence. The workman examined himself as witness. Shri Ranveer Singh deposed that he was on Dharna during the period from 27th March, 1981 to 3rd April, 1981 in support of the demands. He added that his being on Dharna was within the knowledge of the management as Shri U.C. Pant used to meet him while he came to Head Office. He added that he had not received any letter of the management during this period nor he had any knowledge of services rules/standing orders of the Company. He further stated that the Personal Assistant of Assistant Labour Commissioner, of Labour Department came to get the Dharna lifted and the official said that there would be no action against any worker. He accordingly went for duty on 4th April, 1981, but was stopped by the Chowkidar at the gate and has so far not been paid any compensation or dues by the Company. In his cross examination he told that there were 30—32 workers on Dharna and he resorted to Dharna and could not say any other worker joined Dharna thereafter. He could not the workers on Dharna. He denied to have received letter dated 31st March, 1981 and 2nd April, 1981 sent by the Management under UPC (recall notices) and also denied the receipt of Registered A/D letter dated 7th April, 1981 returned by the postal authorities with the remarks “लेने से इनकार दायित्व”. He admitted that he did not write to the Management nor to the Labour Department, when his entry was stopped by the watchman on 4th April, 1981. He told that he did not know the name of the Chowkidar who had stopped him at the gate. He affirmed that he joined as an apprentice and identified his signature on appointment letter dated 1st February, 1981 Exb-M-1. He admitted that he could read the contents of clause No. 7 which laid-down that his service would be governed by the standing order as applicable to the Company and other rules and regulations as are in force or may be framed from time to time but he could not interpret. He further added that leave application Exb-M-2 is related to him and did not know whether any worker could be absent from duty without getting leave sanctioned. He admitted that he did not write to the management that he was resorted to Dharna and never approached to recover his duties.

While the management examined S/Shri U.C. Pant, Deputy Manager (Personnel), Shri R.K. Dixit (Personnel Officer), Shri Hira Singh, Head Watchman, Shri Rajpal and Shri Niranjan Singh, watchmen, as witnesses, whose recorded statements are on file and the management closed the case.

The parties advanced their arguments as under and gave the same in writing.

The learned representative of the workman assailed the action of the management on the ground that there was no dis-obedience or defiance of the standing order which could compel the management to invoke clause No. 15 of the Standing orders. He viewed that the workman was on peaceful agitation following the Gandhian principles for acceptance of their justified demands and the dharnawas within the knowledge of the management. Thus it could not be considered as absent from duty and striking off his name was uncalled for. He further elucidated that there are no such circumstances that he had left the services or had any such intentions. In this case he relied on the Rulings in cases of :—

- (1) G.T. —Lad—*versus*—Chemical and Fibres India Ltd., 1979—L.I.C. P. No. 290.
- (2) Buckingham Co.—*versus*—Venkatiah—1963—LLJ P. No. 638.

He also questioned the bonafide of the management in acting in harsh and hard manner to crush the peaceful and constitutional activities of the Union and also challenged the action of the management that the termination amounted to retrenchment in the light of the recent pronouncements of the Supreme Court, viz. State Bank of India —*versus* Subramaniam, Hindustan Steel Ltd., —*versus* Presiding Officer, Labour Court, DCM—*versus* Shambunath Mukherjee etc. He accordingly pleaded that the management while not observing the conditions precedent, to retrenchment committed illegality, thus the workman is entitled to reinstatement with full back wages.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written request was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman was on Dharna excepting his lone statement. The number of workmen on Dharna, period of Dharna etc. have different versions and thus cannot be accepted that a group of workers i.e., 31 or so were constantly on Dharna. He refuted the allegations of the learned counsel from the opposite side that the Management adopted negative/stern attitude about the demand notice dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position, —*vide* their letters dated Exb W-7 and W-8 and their stand has been vindicated by the Labour Department, Haryana, by rejecting the demand notice, —*vide* endorsement No. 38707, dated 21st August, 1981. It is obvious that there was no justification for the workers/union to create any stir on this account. He also pointed out to the fallacious statements that all absentees went to the factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witnesses of M/s. Hira Singh, Head Watchman and Rajpal and Niranjana Singh Watchmen. He also pointed that there is no truth in the statement of S/Shri Jagbeer Singh and Janardhan Ojha that they reported for duty on 19th April, 1981, which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal, Watchman, who was on duty on that day. He pleaded that the standing orders have legal force and did not get suspended during any agitation. Nor every absentee can be presumed by the management on hunger strike/dharna which was said to have been resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that factum of recall notices issued by the management have been admitted by the Union, —*vide* letter Exb-W-5.

As regards issue No. 2, he further viewed the judgement cited by the opposite counsel are not applicable in the present case as the facts are materially different and the workman had put in less than 2 months service with the Management.

I have gone through the evidences as well as pleas advanced while arguing the case. My findings issue-wise are as under :—

From the facts and evidence it is clear that there was un-rest amongst some workers due to demand raised by their Union. It is also proved that the demands raised by the Union were not considered fit for any action in view of the subsisting settlements, dated 7th February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected, *vide* its endorsement No. 38707 dated 21st August, 1981.

The workman has also not proved that he wrote to the management about his factum of Dharna nor he made any application for leave of his absence. Besides it is on record that the Management sent him letters (recall notices) under UPC and admitted in an indirect manner by the Union *vide* their letter dated 17th March, 1981 Exb-W-5. More so, the management did send Registered A/D letter dated 10th October, 1981 which was returned by the postal authorities with remarks "लेने से इन्कार वापिस". The workman has also admitted that he did not write to the Management about his resumption of his duties, after refusal by the Management on 4th April, 1981. The factum of having reported on the 4th April, 1981 has also not been proved. This all goes to establish that the workman remained absent unauthorisedly from 27th March, 1981 to 10th November, 1981 which exceeds 10 days and invited the breach of contract with his own action which followed with an intimation to him by the Management under clause 15 of the Standing Order. The factum of having reported for duty on the 4th April, 1981 stands disproved in view of statement of Watchman on duty on that day.

The contention of the workmen's counsel that action under clause 15 of the standing order was void as there was no dis-obedience or defiance on the part of the workman has been found untenable as evident from the

documentary facts and the affirmation of "recall notices" issued to him by the Management and deliberately ignored by him. Nor the plea of mala fide or victimisation is forceful because the workman has himself to be blamed for the disregard of the standing order and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of duties. Further, I am inclined to accept the argument of the Management counsel that the Standing orders have got the force of law and deeming provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing Order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorised. Issue Number 1 is decided in favour of the Management.

In view of my findings on issue No. 1 that the workman absented himself from duty exceeding 10 days and lost his lien in view of clause 15 of the Certified Standing Orders of the Company reproduced below, there is no necessity to discuss this issue because the workman was appointed only on 1st February, 1981 (not disputed by him) and the period of service comes to less than 2 months, which cannot attract the provision of Section 25 (F) of the Industrial Disputes Act.

Clause No. 15 of the Certified Standing Order :

Discontinuation of Service :

"If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 and 12 (b) shall lose lien on his own appointment and it shall be deemed that he has left the services from the date of his absence unless he explain his absence absence satisfactorily to the management".

Thus the issue No. 2 is decided against the workman and hold that he is not entitled for any relief.

J. D. MEHTA,

Sole Arbitrator.

Forwarded (four copies) to the Secretary, Haryana, Government, Chandigarh, Labour and Employment Department, as required under Section 17 of the Industrial Disputes Act, 1947, for favour of necessary publication in the Haryana Government Gazette.

J. D. MEHTA,

Sole Arbitrator.

H.L. GUGNANI,

Commissioner and Secretary to Government, Haryana,
Labour and Employment Departments.

LABOUR AND EMPLOYMENT DEPARTMENT

The 6th January, 1981

No. 10(20)79-3E.—In exercise of the powers conferred by section 87 read with section 91-A of the Employees' State Insurance Act, 1948 (Central Act, 34 of 1948), and after consultation with the Employees' State Insurance Corporation the Governor of Haryana hereby exempts the Haryana Agriculture University, (Press), Hissar from the operation of the said Act, with effect from the 1st January, 1972 to 31st March, 1982.

H. L. GUGNANI,

Secretary to Government, Haryana,
Labour and Employment Departments.